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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/713,553 | 11/14/2003 | T. Douglas Moser | TDMF121766 | 7975 |

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EXAMINER

GELLNER, JEFFREY L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,553

Applicant(s)

MOSER ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Invention I - Species B in the reply filed on 23 November 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 17-19, drawn to the non-elected invention, and claims 4-6, drawn to the non-elected species, are withdrawn from examination.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 7-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brick et al. (TB 98-2; CO and WY Agric. Exp. Stat.) in view of Miller et al. (MT200204 AG 3/2002; Montana Stat. U. Exp. Ser.).

As to Claim 1, Brick et al. disclose a method of commercial production of green Cicer beans (page 2, 4th para.) wherein the method comprises selecting acreage based on relative risk of caramelization for a crop of Cicer beans (page 2 last two para. and page 3 first two para.; in that these regions grow and harvest commercially viable Cicer beans); planting Cicer beans in the selected acreage (page 2 last two para. and page 3 first two para.); and harvesting the Cicer

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beans when the growing degree days reach a predetermined accumulated value (Table 2 on page 12 in that DTF and DTM are determined by growing degree days and harvest is optimal at DTM). Not disclosed is monitoring of growing degree days (GDD) by calculating a daily growing degree value. Miller et al., however, discloses calculating growing degree days for Cicer (page 2 at the “*Growing season*” section). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Brick et al. by using daily GDD as disclosed by Miller et al. so as more precisely predict and determine DTM so as to more adequately prepare for harvest.

As to Claims 2 and 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is a particular GDD formula and predetermined accumulated value. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Brick et al. as modified by Miller et al. by using a particular GDD formula and predetermined accumulated value depending upon crop species to arrive at a model that optimally and robustly predicts DTM, or any other physiologic growth stage.

As to Claims 7-9, Brick et al. as modified by Miller et al. further disclose using micro and macro climate data (in that the crop is/will grow in climatic regions that are conducive for growth of a “drought tolerant, cool-season, legume crop” of page 2, 1st para., of Brick et al.) which would be historical and global ocean surface temperature to determine years with or without the effects of El niño.

As to Claims 10 and 11, Brick et al. as modified by Miller et al. further disclose using fertilizer (page 4 “Nutrient Requirement of The Crop” section of Brick et al.).

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As to Claim 12, Brick et al. as modified by Miller et al. further disclose upright plants suitable for mechanical harvesting (from "direct cutting" of "Harvest Procedures" of page 6 of Brick et al.).

As to Claims 13-16, Brick et al. as modified by Miller et al. further disclose using Kabuli seed types ("Commercial Varieties and Seed Sources" of page 3 of Brick et al.); irrigated or dryland (last para. of page 1 of Brick et al.); and, 4-48 in. row spacing (page 4, 2nd complete para. of Brick et al.).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oplinger et al. disclose in the prior art environmental requirements for chickpea. MT200103 AG 7/2001, Growing Degree Days and Phenology for Ohio, and UC IPM Online disclose in the prior art various explanations of growing degree days and their agricultural use.

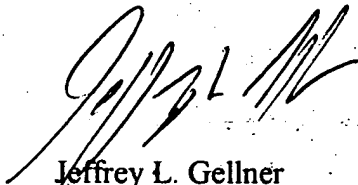
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner
Primary Examiner